

Attorney Docket No. 06618-641001
Serial No. 09/681,728
Amendment dated April 1, 2004
Reply to office action January 5, 2004

REMARKS

After entry of this amendment, claims 1-9 and 13-22 are pending, with claims 4 and 14-22 being withdrawn from consideration.

The note about the finality of the restriction requirement is noted. However the Patent Office is again asked to reconsider this, since it appears to make no sense to consider that claim 1 is in both Group I and Group II, which are noted as being independent and distinct groups. It makes no sense to consider that claim 1 can be independent and distinct from claim 1.

All of the claims under consideration, and specifically claims 1-3, 5-9 and 13 stand rejected under 35 USC 103 as allegedly being unpatentable over Koschwitz in view of Rowley. This contention, however, is respectfully traversed. The rejection admits that Koschwitz does not teach a sound damping material on the tunable damping element, but alleges that this is shown in Rowley. However, this contention is respectfully traversed, since Rowley shows a very different system than what is claimed. Specifically, the rejection refers to the rod 30 as allegedly being the damping rod, and refers to the material 26 as being a sound damping material. However, the material 26 is

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never taught or suggested to be a sound damping material. Moreover, the rod is never described as being an adjustable tuning rod. Rather, this system operates to use the pressure block 26 as an item to preload pressure on the stethoscope. One of the uses of the ring shaped device is to "achieve maximum sensitivity without sacrificing the ability of the stethoscope to locate the source of the sound". From this point of view, it makes no sense to consider that the element 26 could be a sound damping element; in fact, the element 26 must allow the sound to pass, or else the stethoscope would not be operative for its intended function. Rather, this operation is done to preload the stethoscope tube to form "greater uniformity of sound transmission" (see, column 4, line 6); rather than to dampen the sound. Admittedly, Rowley describes that instrument should be designed according to its resonant frequency. However, there is no teaching or suggestion of using the element 31, or any other element to modify the resonant frequency. Rather, according to Rowley and specifically as described in column 4, the frequency response characteristics are changed by pressing the stethoscope harder against the patient, not by changing the pressure on a "tunable damping element".

Therefore, the hypothetical combination of Koschwitz in view of Rowley would not be made by one having ordinary skill in

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the art, since making this combination would destroy the intended function of Rowley. Therefore, this would be an improper combination under applicable law and specifically under MPEP 2143.

Even if the hypothetical combination were made, it would simply teach a Koschwitz type damping rod along with the preloading strategies of Rowley which do not provide a vibration damping material, but in fact teach the opposite: a vibration conducting material which aids in conducting vibration from the patient to the stethoscope. Therefore, claim 1 should be allowable for these reasons.

Claim 7 specifies a washer on the rod and that the sound damping element is coupled to the washer. Nowhere is this anywhere taught or suggested by the cited prior art. Claim 9 specifies that the tuning is based on the maximum frequency of sound absorption of the absorbing material, and again this is nowhere taught or suggested by the cited prior art.

Claim 13 should be allowable for reasons discussed above with respect to both claim 1 and claim 9. Specifically, nowhere is there any teaching or suggestion of sound damping material at all in Rowley, much less that the tuning comprises tuning, based on an optimum frequency of the sound damping material. Rowley simply is devoid of teaching on this subject.

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It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the above amendments and remarks, therefore, all of the claim should be in condition for allowance. A formal notice to that effect is respectfully solicited.

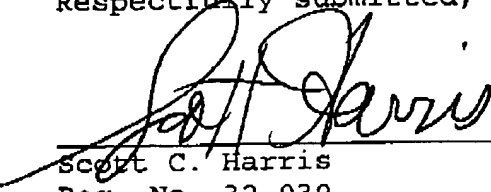
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Respectfully submitted,

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